



January 30, 2004

HOUSE BILL No. 1249

DIGEST OF HB 1249 (Updated January 28, 2004 12:23 pm - DI 107)

Citations Affected: IC 2-3.5; IC 5-10; IC 5-10.3; IC 10-12; IC 21-6.1; IC 34-30; IC 36-8.

Synopsis: Pension payments to former spouses. Establishes a qualified domestic relations order (QDRO) applicable to public employee retirement funds. Requires public pension funds to pay a QDRO. Provides immunity for a public pension fund that makes certain payments in connection with a QDRO.

Effective: July 1, 2004.

Cheney, Foley

January 15, 2004, read first time and referred to Committee on Judiciary.
January 29, 2004, amended, reported — Do Pass.

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HB 1249—LS 7298/DI 102+



January 30, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

HOUSE BILL No. 1249

A BILL FOR AN ACT to amend the Indiana Code concerning pensions.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 2-3.5-4-11 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 11. **(a) Except as**
3 **provided in subsections (b) and (c),** all benefits and assets in the
4 defined benefit fund are exempt from levy, sale, garnishment,
5 attachment, or other legal process. ~~However,~~

6 **(b)** A participant's benefits may be transferred to reimburse the state
7 for loss resulting from the participant's criminal taking of state property
8 if the board receives adequate proof of the loss. The loss must be
9 proven by conviction of a felony or misdemeanor.

10 **(c) Notwithstanding any other provision of this chapter, the**
11 **defined benefit fund shall pay an Indiana qualified domestic**
12 **relations order issued under IC 5-10-14.**

13 SECTION 2. IC 2-3.5-5-9 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. **(a) Except as**
15 **provided in subsections (b) and (c),** all benefits and assets in the
16 defined contribution fund are exempt from levy, sale, garnishment,
17 attachment, or other legal process. ~~However,~~

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(b) A participant's benefits may be transferred to reimburse the state for loss resulting from the participant's criminal taking of state property if the board receives adequate proof of the loss. The loss must be proven by conviction of a felony or misdemeanor.

(c) Notwithstanding any other provision of this chapter, the defined contribution fund shall pay an Indiana qualified domestic relations order issued under IC 5-10-14.

SECTION 3. IC 5-10-14 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

Chapter 14. Indiana Qualified Domestic Relations Orders

Sec. 1. Notwithstanding any other provision of retirement fund law, this chapter applies to:

- (1) an action for dissolution of marriage under IC 31-15-2-2 filed after June 30, 2004; or
- (2) an action for dissolution of marriage under IC 31-15-2-2 filed before July 1, 2004, in which a court has not entered a final order concerning the division of property described in IC 31-9-2-98(b)(1) or IC 31-9-2-98(b)(2) before July 1, 2004; to which a member of a public employee retirement fund is a party.

Sec. 2. This chapter applies to the following funds (collectively referred to in this chapter as a public employee retirement fund):

- (1) Legislators' defined benefit plan (IC 2-3.5-4).
- (2) Legislators' defined contribution plan (IC 2-3.5-5).
- (3) Former governors' and surviving spouses' pension plan (IC 4-3-3).
- (4) State excise police and conservation enforcement officers' retirement fund (IC 5-10-5.5).
- (5) Public employees' retirement fund (IC 5-10.3).
- (6) State police pension plan (established by IC 10-12-2-2).
- (7) Indiana state teachers' retirement fund (IC 21-6.1).
- (8) Judges' 1977 retirement, disability, and death benefit system (IC 33-13-9.1).
- (9) Judges' 1985 retirement, disability, and death benefit system (IC 33-13-10.1).
- (10) Prosecuting attorney retirement fund (IC 33-14-9).
- (11) 1925 police pension fund (IC 36-8-6).
- (12) 1937 firefighters' pension fund (IC 36-8-7).
- (13) 1953 police pension fund (IC 36-8-7.5).
- (14) 1977 police officers' and firefighter's pension and disability fund (IC 36-8-8).
- (15) Sheriff's department retirement plan (established under

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IC 36-8-10-12).

Sec. 3. As used in this chapter, "alternate payee" means the spouse or former spouse of a member of a public employee retirement fund who is recognized by an Indiana QDRO as having a right to receive all or a part of the retirement benefit or member refund payable by a public employee retirement fund to the member.

Sec. 4. As used in this chapter, "Indiana qualified domestic relations order" (referred to in this chapter as an Indiana QDRO) refers to a court order entered in an action for dissolution of marriage under IC 31-15-2-2 that:

- (1) creates or recognizes an alternate payee's right to receive all or a part of a member's retirement benefit or member refund from a public employee retirement fund;
- (2) is issued under this chapter and IC 31-15-7-4; and
- (3) meets the requirements of this chapter.

Sec. 5. As used in this chapter, "Internal Revenue Code" means the Internal Revenue Code of 1986 of the United States as amended.

Sec. 6. As used in this chapter, "member" means a person who is a member of a public employee retirement fund.

Sec. 7. As used in this chapter, "member refund" means a return of all or a part of the contributions of a member of a public employee retirement fund:

- (1) according to the member's election; or
 - (2) that occurs by operation of law; and
- is payable before the member's death.

Sec. 8. As used in this chapter, "public employee retirement fund" refers to the funds listed in section 2 of this chapter collectively.

Sec. 9. As used in this chapter, "regular payee" means a person to whom a retirement benefit or member refund is payable in the absence of an effective Indiana QDRO.

Sec. 10. As used in this chapter, "retirement benefit" means a periodic or nonperiodic payment to a person who qualifies to receive the payment under the public employee retirement fund of which the person is a member, and includes periodic or nonperiodic increases in the retirement benefit.

Sec. 11. An Indiana court with jurisdiction in an action:

- (1) for dissolution of marriage under IC 31-15-2-2 that divides the property of the parties under IC 31-15-7-4; or
- (2) that amends or enforces a property division described in

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subdivision (1);
 may issue an order that all or a part of a retirement benefit or
 member refund payable to or on behalf of a member be paid by a
 public employee retirement fund to a designated alternate payee.

Sec. 12. (a) An Indiana QDRO may not require a public
 employee retirement fund to pay to an alternative payee:

- (1) a benefit;
- (2) an amount;
- (3) a distribution option; or
- (4) a form or type of payment;

that would not be payable to a regular payee.

(b) Except as provided in sections 20 and 21 of this chapter, an
 Indiana QDRO may not affect the:

- (1) vesting period of;
- (2) accrual of creditable service in;
- (3) date on which a benefit becomes payable by;
- (4) method by which a benefit is computed under; or
- (5) right of a member or the member's survivors to make an
 election otherwise authorized by;

a public employee retirement fund.

(c) An Indiana QDRO may not require the payment of a
 retirement benefit or member refund to an alternative payee while
 the member is:

- (1) in active service in a position covered by; or
- (2) below the minimum age for receiving an unreduced
 retirement benefit from;

a public employee retirement fund.

(d) An Indiana QDRO must provide that an alternate payee's
 right to payment terminates and the Indiana QDRO expires at the
 earliest of:

- (1) the involuntary termination of a retirement benefit
 payable to the member;
- (2) the termination of the member's membership in the fund;
 or
- (3) the alternative payee's death, unless the parties agree to
 elect a benefit option that provides for a cobeneficiary benefit
 to the alternate payee.

(e) An Indiana QDRO may not require a public employee
 retirement fund to pay a retirement benefit or member refund that
 is already required to be paid to another alternate payee.

Sec. 13. An Indiana QDRO must specify the following:

- (1) The full legal name of the public employee retirement fund

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or funds to which it applies.

(2) The name, Social Security number, and last known residence address of the member and the alternate payee and state the alternate payee's relationship to the member.

(3) The:

(A) benefit to which the order applies;

(B) amount to be paid to the alternate payee, expressed either as a:

(i) dollar amount;

(ii) percentage of the member's benefit; or

(iii) clearly defined formula applicable to the member's benefit;

(C) distribution method, subject to benefit adjustments payable at the same time and in the same manner as a benefit adjustment applied to the member's distribution; and

(D) date or time when the order will take effect, subject to section 14(a) of this chapter.

(4) If a public employee retirement fund pays a surviving spouse benefit, whether the member's:

(A) former spouse is to be treated as the surviving spouse; and

(B) spouse is not to be treated as the surviving spouse; of the member for purposes of the surviving spouse benefit.

(5) That the order applies to successor plans.

(6) That the court retains jurisdiction to modify the Indiana QDRO.

(7) Any other information required by rules or procedures adopted by the public employee retirement fund to which the order applies.

Sec. 14. (a) A public employee retirement fund may not implement an Indiana QDRO issued under this chapter until thirty (30) days after the date a certified copy of the order is received by the public employee retirement fund.

(b) The public employee retirement fund shall promptly notify the member and the alternative payee by first class mail of the date the fund received the Indiana QDRO.

(c) A public employee retirement fund, the fund's trustees, the fund's officers, and the fund's employees are not liable to a member, a regular payee, or any other person for any amount of a retirement benefit or member refund that is paid in good faith to an alternate payee under an Indiana QDRO.

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1 **Sec. 15. (a) An alternate payee is responsible for maintaining a**
 2 **current residence address on file with the public employee**
 3 **retirement fund that is making payments to the alternate payee**
 4 **under an Indiana QDRO. A public employee retirement fund does**
 5 **not have a duty to attempt to locate an alternate payee other than**
 6 **by sending a written notice to the last known address of the**
 7 **alternate payee on file with the public employee retirement fund.**

8 **(b) If a public employee retirement fund cannot locate an**
 9 **alternate payee when a retirement benefit or member refund**
 10 **becomes payable, the public employee retirement fund shall hold**
 11 **the retirement benefit or member refund that is payable to the**
 12 **alternate payee and make payment when the alternate payee is**
 13 **located.**

14 **(c) If the alternate payee is not located within one hundred**
 15 **eighty (180) days after the date the retirement benefit or member**
 16 **refund becomes payable to the alternate payee, the public**
 17 **employee retirement fund shall pay:**

18 **(1) the retirement benefit or member refund; and**

19 **(2) the amounts held;**
 20 **to the regular payee.**

21 **(d) If the alternate payee is subsequently located, the public**
 22 **employee retirement fund shall reimplement the Indiana QDRO,**
 23 **but the alternate payee is not entitled to the amounts paid to the**
 24 **regular payee under subsection (c).**

25 **(e) The amounts held by the public employee retirement fund**
 26 **under this section do not bear interest.**

27 **Sec. 16. (a) When the amount of a benefit specified in an Indiana**
 28 **QDRO to be paid to an alternate payee exceeds the actual amount**
 29 **of the benefit payable by the public employee retirement fund, the**
 30 **excess amount is disregarded.**

31 **(b) The public employee retirement fund, its trustees, its**
 32 **officers, and its employees are not liable to an alternate payee or**
 33 **any other person for the excess amounts.**

34 **Sec. 17. (a) If more than one (1) Indiana QDRO is issued under**
 35 **section 11 of this chapter to a public employee retirement fund for**
 36 **a member's account, the public employee retirement fund shall**
 37 **honor all the Indiana QDROs to the extent possible.**

38 **(b) When the total amount payable to alternate payees under all**
 39 **Indiana QDROs in effect exceeds the actual amount of the benefit**
 40 **payable by the public employee retirement fund, the public**
 41 **employee retirement fund:**

42 **(1) shall satisfy the Indiana QDROs in the order the Indiana**

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QDROs were received by the public employee retirement fund until the benefit is exhausted; and

(2) shall not pay the Indiana QDROs pro rata.

(c) When a retirement benefit is exhausted under the circumstances described in subsection (b) and the amounts payable under an Indiana QDRO cannot be paid, the excess amount remains unpaid. The public employee retirement fund, its trustees, its officers, and its employees are not liable to the alternate payees or any other person for the excess amount.

Sec. 18. (a) A public employee retirement fund shall not implement an order modifying an Indiana QDRO until thirty (30) days after the date a certified copy of the order is received by the public employee retirement fund.

(b) The public employee retirement fund shall promptly notify the member and the alternative payee by first class mail of the date the fund received the order modifying an Indiana QDRO.

(c) An order modifying an Indiana QDRO that does not:

(1) increase the amount of a benefit; or

(2) add a benefit;

payable to an alternate payee does not affect the priority established by section 17(b) of this chapter.

(d) An order modifying an Indiana QDRO that:

(1) increases the amount of a benefit; or

(2) adds a benefit;

payable to an alternate payee must be satisfied based on the priority established by section 17(b) of this chapter using the date the public employee retirement fund receives the order modifying the Indiana QDRO.

(e) A public employee retirement fund, its trustees, its officers, and its employees are not liable to a member, a regular payee, or any other person for any amount of a retirement benefit or member refund that is paid in good faith to an alternate payee under an order modifying an Indiana QDRO.

Sec. 19. (a) Not later than forty-five (45) days after receiving:

(1) a subpoena from a party to an action for dissolution of marriage under IC 31-15-2-2 that may include:

(A) the division of property described in IC 31-9-2-98(b)(1) or IC 31-9-2-98(b)(2); or

(B) the issuance of an Indiana QDRO under this chapter; involving a member; or

(2) a written request from a member;

a public employee retirement fund shall issue a statement with the

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information required by subsection (b).

(b) The statement issued by a public employee retirement fund under subsection (a) shall include at least the following information concerning the member based on the data on file with the fund on the date the subpoena or request is received by the fund:

(1) The member's accumulated contributions.

(2) The member's accrued benefits.

(3) Any other interest of the member in the public employee retirement fund.

(c) The public employee retirement fund may not be required to furnish an actuarial opinion as to the present value of the member's benefits or other interests as a part of the statement required by subsection (a).

Sec. 20. Notwithstanding section 12(b) of this chapter, when a member or beneficiary is required to apply to a public employee retirement fund for payment of a benefit, an alternate payee who is entitled to all of the benefit under an Indiana QDRO may apply for the benefit, if all other qualifications and requirements for the receipt of the benefit have been met.

Sec. 21. (a) Notwithstanding section 12(b) of this chapter, while an Indiana QDRO concerning a member's retirement benefit is in effect, the member may not elect a form of payment or take any other action that would have the effect of diminishing the amount of the payment to which an alternate payee is entitled, unless:

(1) the alternative payee consents in writing to the election or action; and

(2) the consent is filed with:

(A) the court that issued the Indiana QDRO; and

(B) the public employee retirement fund that is paying the Indiana QDRO.

(b) If the member attempts to make an election or take an action prohibited by subsection (a), the public employee retirement fund shall reject the election or action and advise the member of the need to obtain the alternate payee's consent as provided in subsection (a).

(c) If a public employee retirement fund discovers that it has mistakenly allowed an election or action prohibited by subsection (a), the fund shall disallow the election or action and recalculate the benefit affected by the disallowed election or action.

(d) If a public employee retirement fund determines that an amount paid to a regular payee should have been paid to an

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1 alternates payee, the public employee retirement fund shall make a
 2 reasonable attempt under the circumstances to recover the
 3 amounts paid by mistake as provided in section 22 of this chapter.

4 Sec. 22. (a) If a public employee retirement fund in good faith
 5 overpays a member, regular payee, or alternate payee in
 6 connection with administering an Indiana QDRO, the public
 7 employee retirement fund shall make a reasonable attempt under
 8 the circumstances to:

9 (1) recover the overpayment as provided in this section; and

10 (2) pay the recovered amount to the person who was
 11 underpaid.

12 (b) The public employee retirement fund may recover the
 13 overpayment by deducting the amount in installments over time
 14 from future benefit payments. The amount of the installments is
 15 determined in the same manner as the public employee retirement
 16 fund recovers overpayments not related to an Indiana QDRO.

17 (c) In addition to the remedy described in subsection (b), the
 18 public employee retirement fund may use any other remedy
 19 available to the public employee retirement fund at law or equity
 20 that is reasonable under the circumstances to recover the
 21 overpayment.

22 (d) The public employee retirement fund, its trustees, its
 23 officers, and its employees are not liable to the member, regular
 24 payee, alternate payee, or any other person for amounts described
 25 in subsection (a), regardless of whether the public employee
 26 retirement fund is able to recover the overpayment.

27 Sec. 23. A public employee retirement fund may adopt any rules
 28 or procedures that it determines are necessary to implement this
 29 chapter.

30 Sec. 24. (a) An Indiana QDRO is intended to be a qualified
 31 domestic relations order as defined in paragraph (11) of Section
 32 414(p) of the Internal Revenue Code, and is not a qualified
 33 domestic relations order (QDRO) issued under Section 414(p) of
 34 the Internal Revenue Code.

35 (b) Section 414(p) of the Internal Revenue Code may not be used
 36 as a guide to the interpretation of this chapter.

37 SECTION 4. IC 5-10.3-8-9 IS AMENDED TO READ AS
 38 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. (a) **Except as**
 39 **provided in this subsection and subsection (d)**, all benefits, refunds
 40 of contributions, and money in the fund are exempt from levy, sale,
 41 garnishment, attachment, or other legal process. However, the
 42 member's contributions or benefits, or both, may be transferred to

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1 reimburse ~~his~~ **the member's** employer for loss resulting from the
 2 member's criminal taking of ~~his~~ **the member's** employer's property by
 3 the board if it receives adequate proof of the loss. The loss resulting
 4 from the member's criminal taking of ~~his~~ **the member's** employer's
 5 property must be proven by a felony or misdemeanor conviction.

6 (b) The board may withhold payment of a member's contributions
 7 and interest if the employer of the member notifies the board that
 8 felony or misdemeanor charges accusing the member of the criminal
 9 taking of the employer's property have been filed.

10 (c) The board may withhold payment of a member's contributions
 11 and interest under subsection (b) until the final resolution of the
 12 criminal charges.

13 **(d) Notwithstanding any other provision of this chapter, the**
 14 **fund shall pay an Indiana qualified domestic relations order issued**
 15 **under IC 5-10-14.**

16 SECTION 5. IC 10-12-2-10, AS ADDED BY P.L.2-2003,
 17 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 18 JULY 1, 2004]: Sec. 10. (a) A person entitled to, having an interest in,
 19 or sharing a pension or benefit from the trust funds does not, before the
 20 actual payment of the pension or benefit, have the right to anticipate,
 21 sell, assign, pledge, mortgage, or otherwise dispose of or encumber the
 22 pension or benefit.

23 (b) **Except as provided in subsection (d),** a person's interest, share,
 24 pension, or benefit, before the actual payment of the interest, share,
 25 pension, or benefit, may not be:

- 26 (1) used to satisfy the debts or liabilities of the person entitled to
- 27 the interest, share, pension, or benefit;
- 28 (2) subject to attachment, garnishment, execution, or levy or sale
- 29 on judicial proceedings; or
- 30 (3) transferred by any means, voluntarily or involuntarily.

31 (c) The trustee may pay from the trust fund the amounts that the
 32 trustee determines are proper and necessary expenses of the trust fund.

33 **(d) Notwithstanding any other provision of this chapter, the**
 34 **trust fund shall pay an Indiana qualified domestic relations order**
 35 **issued under IC 5-10-14.**

36 SECTION 6. IC 21-6.1-5-17 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 17. ~~Benefits Exempted~~
 38 ~~from Legal Process; Assignment of Benefits:~~ (a) **Except as provided**
 39 **in subsection (c),** the benefits payable from the fund are exempt from
 40 seizure or levy on attachment, supplemental process, and all other
 41 processes.

42 (b) A member may not transfer any benefit payment; such a transfer

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is void. However, a member may assign benefits for paying:

- (1) premiums on a group, life, hospitalization, surgical or medical insurance plan maintained in whole or in part by a state agency; and
- (2) dues to any association which proves to the board's satisfaction that the association has as members at least twenty percent (20%) of the number of retired members of the fund.

(c) Notwithstanding any other provision of this chapter, the fund shall pay an Indiana qualified domestic relations order issued under IC 5-10-14.

SECTION 7. IC 34-30-2-11.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 11.5. IC 5-10-14-14(c) (Concerning a public employee retirement fund payment of an Indiana qualified domestic relations order).**

SECTION 8. IC 34-30-2-11.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 11.6. IC 5-10-14-16(b) (Concerning a public employee retirement fund treatment of excess amounts specified in an Indiana qualified domestic relations order).**

SECTION 9. IC 34-30-2-11.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 11.7. IC 5-10-14-17(c) (Concerning a public employee retirement fund payment of multiple Indiana qualified domestic relations orders issued for a single member's account).**

SECTION 10. IC 34-30-2-11.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 11.8. IC 5-10-14-18(e) (Concerning a public employee retirement fund payment of an order modifying an Indiana qualified domestic relations order).**

SECTION 11. IC 34-30-2-11.9 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 11.9. IC 5-10-14-22(d) (Concerning a public employee retirement fund recovery of overpayments in connection with payment of an Indiana qualified domestic relations order).**

SECTION 12. IC 36-8-6-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 14. (a) If there is not sufficient money to the credit of the 1925 fund to pay all claims against it in full, claims arising from the death of members of the department**

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1 shall be paid in full first with as little delay as possible, after which an
 2 equal percentage shall be paid upon all other claims to the full extent
 3 of the money on hand, until the fund is replenished.

4 (b) All pensions shall be paid by the treasurer of the local board at
 5 ~~his~~ **the treasurer's** office at the same time and in the same installments
 6 as the members of the police department are paid.

7 (c) **Except as provided in subsection (d)**, all pensions payable out
 8 of the 1925 fund are exempt from seizure or levy upon attachment,
 9 execution, supplemental process, and all other process, whether mesne
 10 or final. Except as provided in section 21 of this chapter, pensions are
 11 not subject to sale, assignment, or transfer by a beneficiary.

12 (d) **Notwithstanding any other provision of this chapter, the**
 13 **1925 fund shall pay an Indiana qualified domestic relations order**
 14 **issued under IC 5-10-14.**

15 SECTION 13. IC 36-8-7-22, AS AMENDED BY P.L.90-2002,
 16 SECTION 489, IS AMENDED TO READ AS FOLLOWS
 17 [EFFECTIVE JULY 1, 2004]: Sec. 22. (a) **Except as provided in**
 18 **subsection (b)**, the 1937 fund may not be, either before or after an
 19 order for distribution to members of the fire department or to the
 20 surviving spouses or guardians of a child or children of a deceased,
 21 disabled, or retired member, held, seized, taken, subjected to, detained,
 22 or levied on by virtue of an attachment, execution, judgment, writ,
 23 interlocutory or other order, decree, or process, or proceedings of any
 24 nature issued out of or by a court in any state for the payment or
 25 satisfaction, in whole or in part, of a debt, damages, demand, claim,
 26 judgment, fine, or amercement of the member or the member's
 27 surviving spouse or children. The 1937 fund shall be kept and
 28 distributed only for the purpose of pensioning the persons named in
 29 this chapter. The local board may, however, annually expend an
 30 amount from the 1937 fund that it considers proper for the necessary
 31 expenses connected with the fund. Notwithstanding any other law,
 32 neither the fiscal body, the county board of tax adjustment, nor the
 33 department of local government finance may reduce these
 34 expenditures.

35 (b) **Notwithstanding any other provision of this chapter, the**
 36 **1937 fund shall pay an Indiana qualified domestic relations order**
 37 **issued under IC 5-10-14.**

38 SECTION 14. IC 36-8-7.5-19 IS AMENDED TO READ AS
 39 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 19. (a) **Except as**
 40 **provided in subsection (b)**, all pensions, annuities, and benefits
 41 payable out of the 1953 fund are exempt from seizure or levy upon
 42 attachment, garnishment, execution, and all other process. Except as

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provided in section 23, pensions, annuities, and benefits are not subject to sale, assignment, or transfer by a beneficiary.

(b) Notwithstanding any other provision of this chapter, the 1953 fund shall pay an Indiana qualified domestic relations order issued under IC 5-10-14.

SECTION 15. IC 36-8-8-17, AS AMENDED BY P.L.183-2003, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 17. (a) **Except as provided in subsection (d)**, the benefits of this chapter are exempt from attachment and garnishment and may not be seized, taken, or levied upon by any execution or process.

(b) Except as provided in subsection (c) and section 17.2 of this chapter, a person receiving a benefit under this chapter may not transfer, assign, or sell the benefit.

(c) Notwithstanding any other provision of this chapter, to the extent required by Internal Revenue Code Section 401(a)(31), as added by the Unemployment Compensation Amendments of 1992 (P.L.102-318), and any amendments and regulations related to Section 401(a)(31), the 1977 fund shall allow participants and qualified beneficiaries to elect a direct rollover of eligible distributions to another eligible retirement plan.

(d) Notwithstanding any other provision of this chapter, the 1977 fund shall pay an Indiana qualified domestic relations order issued under IC 5-10-14.

SECTION 16. IC 36-8-10-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 19. (a) A person entitled to ~~a~~ an interest in or share of a pension or benefit from the trust funds may not, before the actual payment, anticipate it or sell, assign, pledge, mortgage, or otherwise dispose of or encumber it. In addition, **except as provided in subsection (b)**, the interest, share, pension, or benefit is not, before the actual payment, liable for the debts or liabilities of the person entitled to it, nor is it subject to attachment, garnishment, execution, levy, or sale on judicial proceedings, or transferable, voluntarily or involuntarily. The trustee may expend the sums from the fund that it considers proper for necessary expenses.

(b) Notwithstanding any other provision of this chapter, the fund shall pay an Indiana qualified domestic relations order issued under IC 5-10-14.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1249, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 5, between lines 18 and 19, begin a new line block indented and insert:

"(4) If a public employee retirement fund pays a surviving spouse benefit, whether the member's:

(A) former spouse is to be treated as the surviving spouse; and

(B) spouse is not to be treated as the surviving spouse; of the member for purposes of the surviving spouse benefit."

Page 5, line 19, delete "(4)" and insert "(5)".

Page 5, line 20, delete "(5)" and insert "(6)".

Page 5, line 22, delete "(6)" and insert "(7)".

Page 8, line 17, after "payment" insert "**or take any other action**".

Page 8, line 20, delete ";" and insert "**or action;**".

Page 8, line 26, after "election" insert "**or take an action**".

Page 8, line 28, after "election" insert "**or action**".

Page 8, line 31, after "election" insert "**or action**".

Page 8, line 32, after "election" insert "**or action**".

Page 8, line 33, delete "." and insert "**or action.**".

and when so amended that said bill do pass.

(Reference is to HB 1249 as introduced.)

LAWSON L, Chair

Committee Vote: yeas 12, nays 0.

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